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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,511	01/16/2001	Takayuki Hisanaka	02309/0001158-US0	5640
7278	7590	12/08/2009		EXAMINER
DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			ANDERSON, CATHARINE L	
			ART UNIT	PAPER NUMBER
			3761	
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			12/08/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/761,511	<b>Applicant(s)</b> HISANAKA, TAKAYUKI
	<b>Examiner</b> Lynne Anderson	<b>Art Unit</b> 3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

**Status**

1) Responsive to communication(s) filed on 28 August 2009.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 8,11,16 and 17 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 8,11,16 and 17 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date: \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 28 August 2009 have been fully considered but they are not persuasive.
2. In response to the applicant's argument that Ehrnsperger fails to disclose a support layer that absorbs moisture, it is noted that the present specification discloses that the support layer is capable of absorbing moisture or dissolving in water (emphasis added), and therefore it is unclear how the claimed support layer is capable of both dissolving and absorbing moisture.

### ***Specification***

3. The amendment filed 28 August 2009 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The support layer being capable of both dissolving and absorbing moisture is not supported by the present specification.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 8, 11, and 16-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The support layer being capable of both dissolving and absorbing moisture is not supported by the present specification. The present specification discloses on page 12, lines 1-2, that the support layer is capable of absorbing moisture *or* dissolving in water (emphasis added), but does not disclose the support layer being capable of doing both. The present specification, as best understood by the Examiner, discloses two separate embodiments (hence the use of 'or'), one in which the support layer is designed to dissolve, and the other in which it is designed to absorb moisture and 'fluidize'. It is unclear how the support layer would be able to absorb moisture if it also dissolves in water. Therefore, the present specification does not support the claimed invention.

***Response to Amendment***

6. The amendment filed 28 August 2009 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The support layer being capable of both dissolving and absorbing moisture is not supported by the present specification.

Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 8, 11, and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ehrnsperger et al. (6,160,200) in view of Maeda et al. (4,740,402).

9. Ehrnsperger discloses all aspects of the claimed invention with the exception of the support layer comprising polyethylene oxide. Ehrnsperger discloses an absorbent article 20 comprising a liquid pervious topsheet 24, a backsheet 26, and an absorbent core 26, as shown in figures 1-6. A skin-protective ingredient containing layer is applied to the upper surface of the topsheet 24, as disclosed in column 6, line 64-column 7, line 17, in a predetermined pattern. The skin-protective ingredient is fully capable of forming an oily film on the skin of a wearer. A support layer 66 is formed over the skin protective ingredient containing layer, as disclosed in column 17, lines 59-62, and covers substantially the entire article, as disclosed in column 11, lines 3-5. The skin protective ingredient containing layer comprises petroleum jelly, as disclosed in column 16, lines 60-62. The support layer 66 melts at a temperature threshold of 35 degrees C, as disclosed in column 13, lines 10-12. The support layer 66 is soluble in water at and above 25 degrees Celsius, as disclosed in column 10, lines 36-53 and column 13, lines 1-23. It is the examiner's position that since the support layer is soluble in water, at 100% humidity, the support layer is therefore promoted at 100% humidity, which is

greater than 30% humidity. The support layer 66 is therefore capable of exposing the skin protective ingredient containing layer to the skin of a wearer after dissolving.

10. Ehrnsperger discloses the support layer comprises a water-soluble polymer such as polyacryamide. Maeda teaches the functional equivalence of polyacrylamide and polyethylene oxide in a water-soluble coating, as disclosed in column 3, lines 26-44. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the support layer of Ehrnsperger with polyethylene oxide, since Maeda teaches the functional equivalence of polyacrylamide and polyethylene oxide in a water-soluble coating.

11. With respect to claim 11, the article further comprises leak-preventive cuffs 32.

12. With respect to claims 16 and 17, the skin-protective ingredient containing layer is located on the topsheet 24 of the article, which fits around the wearer's thighs and abdominal region.

***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynne Anderson whose telephone number is (571)272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. A./

Examiner, Art Unit 3761

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761